

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2003–2004 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar

marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 2003–2004 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.253 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.253 Final free and restricted percentages for the 2003–2004 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2003, which shall be free and restricted, respectively, are designated as follows: Free percentage, 75 percent and restricted percentage, 25 percent.

Dated: December 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31946 Filed 12–29–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1720

RIN 0572–AB83

Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish procedures for a guarantee program for cooperatives and other not-for-profit lenders that make loans eligible for assistance under the Rural Electrification Act of 1936 (the RE Act). Criteria for eligibility of lenders and transactions are set forth in the rule together with application procedures. Program participants are required to pay an annual fee for the guarantee. The fee will be credited to the Rural Development Subaccount to provide funds for zero-interest loans and grants pursuant to section 313 of the RE Act. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), amended the RE Act, by adding section 313A which establishes this program.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than March 1, 2004.

ADDRESSES: Written comments should be addressed to Blaine D. Stockton, Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 5156 South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone (202) 720–9545. RUS requires a signed original and three copies of all comments (7 CFR Part 1700). All comments received will be made available for inspection in room 4037 South Building during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick R. Sarver, Management Analyst, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5158, Washington, DC 20250–1560. Telephone number (202) 690–2992, Facsimile (202) 690–0717.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the

Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this proposed rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this proposed rule will not have significant impact on a substantial number of small entities. No small entities meet the statutory criteria for participation in the program that is the subject of this rulemaking.

Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the "Act"), OMB must approve all "collection of information" by RUS. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this proposed rule will involve less than 10 persons and do not require approval under the provisions of the Act.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512-1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related

notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109-Stat. 48)) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

The Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 901 *et seq.*) authorizes the Secretary of Agriculture (the "Secretary") to guarantee and make loans to persons, corporations, states, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to the Rural Utilities Service (RUS) under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, *see* 7 CFR 1700.25.

Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, 116 Stat. 413) ("FSRIA") amends the RE Act by adding a new section 313A: Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes (7 U.S.C. 940c-1). FSRIA became law on May 13, 2001, and requires the Secretary of Agriculture to promulgate regulations for issuing guarantees under section 313A.

Section 313A of the RE Act provides that under certain specified circumstances, the Secretary shall guarantee payments on bonds or notes issued by cooperative or other lenders organized on a not-for-profit basis.

Section 313A provides limits to the amount of a guarantee, the purposes for the guarantee, and the qualifications of eligible lenders seeking a guarantee of a bonds or notes. Section 313A requires that a guarantee be no greater than the principal amount of outstanding loans of the lender for electrification or telephone purposes that have been made concurrently with loans approved for such purposes under the RE Act. The section also provides for charging an annual fee of 30 basis points on the outstanding balance of the guaranteed bonds or notes to lenders that receive a guarantee under section 313A. Proceeds of the fee are required, except in limited circumstances specified in section 313A, to be deposited into the Rural Economic Development Subaccount. From this subaccount, zero interest loans and grants are made to promote rural development programs as described in section 313(b)(2)(B) of the RE Act (7 U.S.C. 940c-1(b)(2)(B)).

The FSRIA limits eligibility under this program to not-for-profit third party lenders that make loans for any electrification or telephone purpose eligible for assistance under the Rural Electrification Act of 1936. Currently there are two lenders that meet this eligibility criterion; the National Rural Utilities Cooperative Finance Corporation (CFC) and CoBank.

RUS is proposing new procedures for the guarantee program established by section 313A. In order to produce a comprehensive regulation that will carry out the objectives set forth in the FSRIA, and provide for a program consistent with established RUS guiding principles, RUS discussed program options with other federal agencies, and examined recently established federal guarantee programs. Furthermore, RUS retained the services of an outside consultant with experience in capital markets and establishing federal guarantee programs to assist it in the development of this program.

Requests for section 313A guarantees will be considered according to eligibility requirements and the strength of the lender seeking such a guarantee. A guaranteed lender must demonstrate by sufficient evidence in its application and periodically while any guarantee is in effect, that the guaranteed lender will at all times be able to make timely payments on the bonds or notes being guaranteed.

Program Summary

The rule establishes general standards for issuing a guarantee consistent with statutory requirements. The general standards provide limitations on the bonds and the use of the proceeds.

Eligibility criteria are established according to statute and RUS program requirements. To be eligible to participate in the program, a guaranteed lender must be a bank or other lending institution organized as a private, not-for-profit cooperative association or otherwise on a non-profit basis and be able to demonstrate to the Secretary that it possesses the appropriate expertise, experience and qualifications to make loans for electrification or telephone purposes. To be eligible to receive a guarantee, a guaranteed lender must furnish the Secretary with a certified list of the principal balances of concurrent loans then outstanding evidencing that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding. Also, the guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee and the final maturity of the guaranteed bonds may not exceed 15 years.

The rules establish an application process where the applicant is required to submit eligibility data and certifications for on-going review. The application information includes background information, a term sheet summarizing the proposed terms and conditions of the guarantee agreement, a statement as to how the proceeds are to be used and the financial benefit it anticipates deriving from participating in the program, a pro-forma cash flow projection or business plan for the next five years, consolidated financial statements of the guaranteed lender for the previous three years, evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee; and other application documents deemed necessary by the Secretary for the evaluation of applicants.

Each application will be reviewed by the Secretary to determine whether it meets the eligibility requirements. The application is then evaluated based upon the extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds, the adequacy of the proposed provisions to protect the Federal government, the applicant's demonstrated performance of financially sound business practices; the extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, and the amount of fee income available to be

deposited into the Rural Economic Development Subaccount.

After the guarantee is approved, other conditions must be met prior to receiving final endorsement by the Secretary. Bond documents must be executed by the applicant and the applicant must certify to the Secretary that the guaranteed bonds proceeds will be applied to fund eligible new loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans. The applicant must also provide a final certified list of concurrent loans and their outstanding balances as of the date the guarantee is issued. Counsel to the applicant must furnish an opinion as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents. No material adverse change can occur between the date of the application and date of execution of the guarantee. The Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary) must certify acknowledging the applicant's commitment to submit to the Secretary an annual credit assessment of the applicant by a Rating Agency and acknowledging the guaranteed lender's commitment to deliver annual consolidated financial statements audited by an independent certified public accountant for each year during which the guaranteed bonds are outstanding. It should be emphasized that the Secretary will not issue the guarantee if, in the sole judgment of the Secretary, there has occurred a material adverse change in the condition (financial or otherwise) or prospects of the guaranteed lender or its subsidiaries.

The rule establishes an annual fee for the guarantee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guaranteed bond. The fee is deposited into the Rural Economic Development Subaccount maintained under section 313(b)(2)(A) of the RE Act. The Secretary also has the authority to structure the schedule for payment of the annual fee, with the consent of the lender, so that sufficient funds are available to pay the subsidy costs for the guarantee.

As long as any guaranteed bonds remain outstanding, the guaranteed lender agrees to provide the Secretary on an annual basis consolidated financial statements and accompanying footnotes, audited by independent certified public accountants, pro forma projections of the guaranteed lender's balance sheet, income statement, and

statement of cash flows over the ensuing five years, a credit assessment issued by a Rating Agency, a review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, a review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and other such information requested by the Secretary. Additionally the bond documents will specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

Economic Impact

The Guarantees for Bonds and Notes Issued for Electrification and Telephone Purposes Program (the "Program") facilitates the continued improvement of electric and telephone service in rural America, by providing Federal loan guarantees on debt issued by non-profit, cooperative and other rural lending institutions (the "Lenders"). However, by providing bond guarantees under the Program, financial default risk is transferred to the Federal government. Under the most likely scenario, the fees collected from the Lenders would offset all of the expected credit subsidy costs of the Program. As a result, the expected cost to taxpayers would be zero. However, there is a possibility that the Lender could default, which, depending on the timing of the default, could expose the government to a maximum liability of approximately \$3 billion. Based on historical experience for unsecured corporate bonds of this quality, the government could be expected to recover at least one-half of the defaulted amounts, making it more likely that the government's maximum exposure is approximately \$1.5 billion. The exposure may be even less depending upon the annual appropriation by Congress to fund guarantees through this program.

Without this new program lenders would continue to obtain debt financing at prices that reflect the financial risk of uninsured bonds. The higher rates associated with this financing as compared to Federally guaranteed debt would be passed on to the cooperatives and other borrowers and eventually to the consumers in rural America in the form of higher electric or telephone rates. Under the proposed Rule lenders could refinance outstanding debt at a lower rate and pass the savings in one form or another on to its borrowers

consistent with 1720.4(a)(4) and the statute.

Lenders could alternatively elect to directly pass through to the cooperative borrowers the lower interest rates it obtains under the Program by reducing the rate on a like amount of eligible loans consistent with 1720.4(a)(4) and the statute. Eligible loans consist of either new or existing loans made for electrification or telephone projects that are eligible for assistance under the RE Act and are made concurrently with RUS-funded loans. The Secretary has the authority to require that borrowers seek concurrent loans for up to 30 percent of their request as provided in Section 307 of the RE Act. Using current interest rates as a guideline, lenders with a mid investment grade credit rating are able to issue long-term debt at approximately 2 percent over the comparable term U.S. Treasury bond yield. Similar-term debt guaranteed by the U.S. government is estimated to trade at a yield spread of approximately 0.5 percent over Treasuries. Thus, there is a potential interest rate savings of approximately 1.5 percent for lenders under this guarantee program. However, the 30 basis point average annual fee associated with the guarantees reduces the potential savings. Subtracting out the fee, average interest rate savings of approximately 1.2 percent could still be realized by qualified lenders under the guarantee program.

The Federal government would deposit the annual guarantee fees it charges the Lender, less any portion necessary to pay the subsidy cost, into an account for grants and zero interest rate rural economic development loans under the Rural Economic Development Loan and Grant Program ("REDLG"). Assuming \$3 billion of loan guarantees were made under this program, approximately \$90 million dollars of investment capital could be infused into the REDLGP over the next 15 years.¹ Past performance indicates that this amount could be leveraged to approximately \$265.5 million in total investment in rural America through further investment by private lenders and investors.² Using USDA's Economic Research Service multiplier for rural employment, an investment of this size

¹ Assumes 20 basis points (.20 percent) of the 30 basis point (.30 percent) guarantee fee is deposited in the REDLG account annually. .20 percent \times \$3 billion = \$6 million \times 15 years = \$90 million.

² Estimated using historical investment leveraged from the flow of funds into the REDLG account where every \$1 in investment into the REDLG account leveraged \$2.95 in further investment in rural America. Data provided by RBS.

could be expected to generate over 6,000 jobs in rural America.³

The RUS program has been very successful over the years in effectively managing the government's risk. This has been accomplished by ensuring that borrowers meet strict financial and engineering requirements. Since the late 1930's the REA and now RUS has administered the Electric and Telecommunications programs which currently hold a cumulative outstanding balance of over \$45 billion. During that time the Electric and Telecommunications programs have experienced only ten defaults that required a write-off of debt in the amount of \$4.9 billion.

Federal government guarantee programs by their nature expose the taxpayer to financial risk. For the Program, the risks are estimated to be minimal because of the non-competitive nature of many of the businesses for which loans could be made (e.g., electric distribution cooperatives) and the requirement for guarantee recipients to pay an annual fee that offsets expected losses. Steps that will be taken to further reduce risk include stipulating minimum credit ratings without guarantees, establishing sound underwriting criteria, and requiring the participant to demonstrate industry expertise.

FIRREA Requirements

For this program the Federal Government proposes using capital adequacy standards of the banking industry as defined by the Federal Institutions Reform, Recovery and Enforcement Act (FIRREA). FIRREA provides regulatory oversight of all Savings and Loan institutions under the Office of Thrift Supervision. FIRREA contains a number of provisions relating to capital standards and consequences for failure to meet those standards.

The Capital Adequacy standards in FIRREA will be utilized by the Program. The investment grade rating required by the Program statute indicates that applicants must satisfy capital adequacy requirements necessary to meet their payment obligations. As part of the financial covenants in the final guarantee agreement between RUS and the participant, language will be included that is designed to address the capital adequacy standards of FIRREA. These may include financial indicators such as loan loss reserves, debt-to-equity ratios, and times-interest-earned ratios.

³ Estimated using the USDA's Economic Research Service multiplier for rural employment, which estimates that for every \$1 million in investment, 23 jobs are created nationwide.

FIRREA contains specific language that addresses non-compliance with capital adequacy requirements to limit the institution's ability to grow, restrict its growth to correspond with capital, or submit plans to reach compliance. As part of the financial covenants in the Program legal documents, language will be included to address non-compliance with capital adequacy standards or credit rating downgrades to include specific remedies—such as requiring the obligor to post additional collateral until the capital adequacy standards are met or increases in the interest rates on the guaranteed bonds or notes.

Issues for Public Comment

In this proposed rulemaking RUS is soliciting information from the public on all aspects including terms, limitations and conditions of this program with the goal of attaining the greatest possible public benefits without assuming undue risks for the U.S. Treasury and taxpayers. Furthermore, RUS asks that commenters give consideration to the following questions.

1. A description of the impacts on rural America is presented in the preamble. Is this description complete or are there other concerns with regard to the potential benefits for, or costs to, rural communities, lenders making use of the program, or taxpayers?

2. The proposed rule requires collateral for securitization of a bond under this program as well as the establishment of a bankruptcy remote trust fund capitalized at 5% of the guaranteed amount outstanding. This trust fund would be viewed as a risk-sharing mechanism in light of the government's potential 100% guarantee of an applicant's obligations. The trust fund would establish additional collateral for reimbursement of any advances the government makes on its guarantee. Please comment on this risk-sharing methodology and other methods to protect the guarantor's interests through collateralization.

3. The capital adequacy standards of FIRREA will be utilized by this program. Please comment on the use of FIRREA standards as a model and the use of FIRREA-like restrictions in the event of noncompliance. Please also comment on whether the use of financial triggers is an effective mechanism for protecting the guarantor's interests.

4. The proposed rule does not impose a limitation on the proceeds of the bond or note guaranteed. One consideration for this program is to limit the amount of refinancing to 25% of the amount guaranteed. It is believed that such a

limitation would increase new loans for rural areas. Please discuss the benefit and/or detriment to using this type of limitation.

5. The regulation contemplates monitoring compliance with terms of the guarantee through qualified third parties acting as agents for the guarantor but hired by the lender obtaining the guarantee. Does this mechanism provide adequate protection of the guarantor's interest? Are other mechanisms available that present fewer potential conflicts of interest while relying primarily on qualified private sector monitors?

6. Does the program envisioned by the rule adequately minimize the financial risk to taxpayers? If not, what changes should be made to best reduce the risk while still providing the kind of guarantee program envisioned by Congress?

7. Issuance of a guarantee may provide an incentive for recipients to reduce the quality of their lending/management policies and practices. Does the rule adequately ensure that the recipient's management and lending practices are sound, effective, and minimize default risk?

8. Is the accompanying economic analysis for this rule objective and does it provide a reasonably complete assessment of each significant cost and benefit of the rule?

List of Subjects in 7 CFR Part 1720

Electric power, Electric utilities, Loan program—energy, reporting and recordkeeping requirements, Rural areas.

For reasons set out in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1720 to read as follows:

PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES

Sec.	
1720.1	Purpose.
1720.2	Background.
1720.3	Definitions.
1720.4	General standards.
1720.5	Eligibility criteria.
1720.6	Application process.
1720.7	Application evaluation.
1720.8	Issuance of the guarantee.
1720.9	Guarantee Agreement.
1720.10	Fees.
1720.11	Servicing.
1720.12	Reporting requirement.
1720.13	Limitations on Guarantees.
1720.14	Nature of guarantee; acceleration of guaranteed bonds.
1720.15	Equal opportunity requirements.

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 940c.

§ 1720.1 Purpose.

This part prescribes regulations implementing a guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the Rural Electrification Act of 1936 (7 U.S.C. 940c-1).

§ 1720.2 Background.

The Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 901 *et seq.*) authorizes the Secretary to guarantee and make loans to persons, corporations, states, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to RUS under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, see 7 CFR § 1700.25. Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub.L. 107-171) (FSRIA) amended the RE Act to include a new program under section 313A entitled Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes. This measure became law on May 13, 2002, and directs the Secretary of Agriculture to promulgate regulations that carry out the Program.

§ 1720.3 Definitions.

For the purpose of this part:
Administrator means the Administrator of RUS.

Applicant means a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis, that is applying for RUS to guarantee a bond or note under this part.

Bond Documents means the trust indenture, bond resolution, guarantee, guarantee agreement and all other instruments and documentation pertaining to the issuance of the guaranteed bonds.

Borrower means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification or rural telephony under the RE Act, or that is seeking such financing.

Concurrent Loan means a loan that a guaranteed lender extends to a borrower for up to 30 percent of the cost of an eligible electrification or telephone purpose under the RE Act, concurrently with an insured loan made by the Secretary pursuant to section 307 of the RE Act.

Federal Financing Bank means a government corporation and instrumentality of the United States of America under the general supervision of the Secretary of the Treasury.

Guarantee means the written agreement between the Secretary and a guaranteed bondholder, pursuant to which the Secretary guarantees full repayment of the principal, interest, and call premium, if any, on the guaranteed lender's guaranteed bond.

Guarantee Agreement means the written agreement between the Secretary and the guaranteed lender which sets forth the terms and conditions of the guarantee.

Guaranteed Bond means any bond, note, debenture, or other debt obligation issued by a guaranteed lender on a fixed or variable rate basis, and approved by the Secretary for a guarantee under this part.

Guaranteed Bondholder means any investor in a guaranteed bond.

Guaranteed Lender means an applicant that has been approved for a guarantee under this part.

Investment Grade Rating means a bond rating of "BBB -" or higher or "Baa3" or higher, or its equivalent, assigned by a rating agency.

Loan means any credit instrument that the guaranteed lender extends to a borrower for any electrification or telephone purpose eligible under the RE Act, including loans as set forth in section 4 of the RE Act for electricity transmission lines and distribution systems (excluding generating facilities) and as set forth in section 201 of the RE Act for telephone lines, facilities and systems.

Loan documents means the loan agreement and all other instruments and documentation between the guaranteed lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of a loan.

Program means the guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the RE Act as amended.

Rating Agency means a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization.

RE Act means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) as amended.

RUS means the Rural Utilities Service, an agency of the U.S. Department of Agriculture.

Secretary means the Secretary of Agriculture acting through the Administrator of RUS.

Subsidy Amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal government of a guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on government receipts or outlays, in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*)

§ 1720.4 General standards.

(a) In accordance with section 313A of the RE Act, a guarantee will be issued by the Secretary only if the Secretary determines, in accordance with the requirements set forth in this part, that:

(1) The proceeds of the guaranteed bonds will be used by the guaranteed lender to make loans to borrowers for electrification or telephone purposes eligible for assistance under this chapter, or to refinance bonds or notes previously issued by the guaranteed lender for such purposes;

(2) At the time the guarantee is executed, the total principal amount of guaranteed bonds outstanding would not exceed the principal amount of outstanding concurrent loans previously made by the guaranteed lender;

(3) The proceeds of the guaranteed bonds will not be used directly or indirectly to fund projects for the generation of electricity; and

(4) The guaranteed lender will not use any amounts obtained from the reduction in funding costs provided by the program to reduce the interest rates borrowers are paying on new or outstanding loans, other than new concurrent loans as provided in 7 CFR part 1710, of this chapter.

(b) The Secretary shall guarantee payments on guaranteed bonds in such form and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as determined appropriate for satisfying the requirements of this part. The Secretary shall require the guaranteed lender to enter into a guaranty agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering,

§ 1720.5 Eligibility criteria.

(a) To be eligible to participate in the program, a guaranteed lender must be:

(1) a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis; and

(2) able to demonstrate to the Secretary that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

(b) To be eligible to receive a guarantee, a guaranteed lender's bond must meet the following criteria:

(1) The guaranteed lender must furnish the Secretary with a certified list of the principal balances of concurrent loans then outstanding evidencing that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding;

(2) The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee;

(3) The final maturity of the guaranteed bonds may not exceed 15 years, and

(4) The guaranteed bonds must be issued to the Federal Financing Bank on terms and conditions consistent with Federal Financing Bank lending policy and satisfactory to the Secretary.

(c) During the term of the guarantee, the guaranteed lender must maintain the following:

(1) Establish a bankruptcy remote trust fund capitalized at 5% of the guaranteed amount outstanding; and

(2) As long as the guarantee is in effect, the lender shall not issue cash patronage refunds in excess of five percent of the total patronage refund eligible. Additionally, stock issued as part of the patronage refund shall not be redeemable in cash during the term of any part of the guarantee. The lender shall not issue any dividends on any class of stock during the term of any part of the guarantee.

(d) A lending institution's status as an eligible applicant does not assure that the Secretary will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Secretary from declining to issue a guarantee.

§ 1720.6 Application process.

(a) Applications shall contain the following:

(1) Background and contact information on the applicant;

(2) A term sheet summarizing the proposed terms and conditions of, and

the security pledged to assure the applicant's performance under, the guarantee agreement;

(3) A statement by the applicant as to how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program;

(4) A pro-forma cash flow projection or business plan for the next five years, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed bonds in accordance with their terms;

(5) A description of the specific and identifiable loans comprising the collateral or other pledge securing the guaranteed bonds;

(6) Consolidated financial statements of the guaranteed lender for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(7) Evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee;

(8) A review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and

(9) Such other application documents and submissions deemed necessary by the Secretary for the evaluation of applicants.

(b) The application process occurs as follows:

(1) The applicant submits an application to the Secretary;

(2) The application is screened by RUS pursuant to 7 CFR 1720.7(a) of this part, to ascertain its threshold eligibility for the program;

(3) RUS evaluates the application pursuant to the selection criteria set forth in 7 CFR 1720.7(b) of this part;

(4) If RUS provisionally approves the application, the applicant and RUS negotiate terms and conditions of the bond documents, and

(5) The applicant offers its guaranteed bonds to the Federal Financing Bank, and the Secretary upon approval of the pricing, redemption provisions and other terms of the offering, executes the guarantee.

(c) If requested by the applicant at the time it files its application, the General Counsel of the Department of Agriculture shall provide the Secretary with an opinion regarding the validity and authority of a guarantee issued to

the lender under section 313A of the RE Act.

§ 1720.7 Application evaluation.

(a) *Eligibility screening.* Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5 of this part, the information required under 7 CFR 1720.6 of this part, is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

(b) *Evaluation.* Pursuant to paragraph (a) of this section, applications will be subject to a substantive review, on a competitive basis, by the Secretary based upon the following evaluation factors, listed in order of importance:

(1) The extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds;

(2) The adequacy of the proposed provisions to protect the Federal government, based upon items including, but not limited to the nature of the pledged security, the priority of the lien position, if any, pledged by the applicant, and the provision for an orderly retirement of principal such as an amortizing bond structure or an internal sinking fund;

(3) The applicant's demonstrated performance of financially sound business practices;

(4) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, or generate other economic benefits; and

(5) The amount of fee income available to be deposited into the Rural Economic Development Subaccount, maintained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c-1(b)(2)(B)), after payment of the subsidy amount.

(c) *Independent Assessment.* Before a guarantee decision is made by the Secretary, the Federal Financing Bank shall review the adequacy of the structure of the note or bond offering and the determination by the Rating Agency, required under 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without the guarantee. The Federal Financing Bank will seek Office of Management and Budget's review of its findings prior to submittal of its report to the Secretary.

(d) *Decisions by the Secretary.* The Secretary shall approve or deny applications in a timely manner as such applications are received. The Secretary may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is

conducted of applicant requests. RUS shall notify the applicant in writing of the Secretary's approval or denial of an application. Approvals for guarantees shall be conditioned upon compliance with 7 CFR 1720.6 of this part.

§ 1720.8 Issuance of the guarantee.

(a) The following requirements must be met by the applicant prior to the endorsement of a guarantee by the Secretary.

(1) A guarantee agreement suitable in form and substance to the Secretary must be delivered.

(2) Bond documents must be executed by the applicant setting forth the legal provisions relating to the guaranteed bonds, including but not limited to payment dates, interest rates, redemption features, pledged security, additional borrowing terms including an explicit agreement to make payments even if loans made using the proceeds of such bond or note is not repaid to the lender, other financial covenants, and events of default and remedies;

(3) Prior to the issuance of the guarantee, the applicant must certify to the Secretary that the proceeds from the guaranteed bonds will be applied to fund eligible new loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans;

(4) The applicant provides a certified list of concurrent loans and their outstanding balances as of the date the guarantee is to be issued;

(5) Counsel to the applicant must furnish an opinion satisfactory to the Secretary as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents;

(6) No material adverse change occurs between the date of the application and date of execution of the guarantee;

(7) The applicant shall provide evidence of an investment grade rating from a Rating Agency for the proposed guaranteed bond without regard to the guarantee; and

(8) Certification by the Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary), acknowledging the applicant's commitment to submit to the Secretary, an annual credit assessment of the applicant by a Rating Agency, an annual review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, an annual review and certification of the lender's capital adequacy utilizing the capital

adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, the lender's commitment to deliver annual consolidated financial statements audited by an independent certified public accountant each year, during which the guaranteed bonds are outstanding, and other such information requested by the Secretary

(b) The Secretary shall not issue a guarantee if the applicant is unwilling or unable to satisfy all requirements.

§ 1720.9 Guarantee agreement.

(a) The guaranteed lender will be required to sign a guarantee agreement with the Secretary setting forth the terms and conditions upon which the Secretary guarantees the payment of the guaranteed bonds.

(b) The guaranteed bonds shall refer to the guarantee agreement as controlling the terms of the guarantee.

(c) The guarantee agreement shall address the following matters:

(1) Definitions and principles of construction;

(2) The form of guarantee;

(3) Coverage of the guarantee;

(4) Timely demand for payment on the guarantee;

(5) Any prohibited amendments of bond documents or limitations on transfer of the guarantee;

(6) Limitations on acceleration of guaranteed bonds;

(7) Calculation and manner of paying the guarantee fee;

(8) Consequences of revocation of payment on the guaranteed bonds;

(9) Representations and warranties of the guaranteed lender;

(10) Representations and warranties for the holder of the guaranteed bonds;

(11) Claim procedures;

(12) What constitutes a failure by the guaranteed lender to pay;

(13) Demand on RUS;

(14) Assignment to RUS;

(15) Conditions of guarantee which may include requiring the guaranteed lender to adopt measures to ensure adequate capital levels are retained to absorb losses relative to risk in the guaranteed lender's portfolio and requirements on the guaranteed lender to hold additional capital against the risk of default;

(16) Payment by RUS;

(17) RUS payment does not discharge guaranteed lender;

(18) Undertakings for the benefit of the holders of guaranteed bonds, including: Notices, registration, prohibited amendments, prohibited transfers, indemnification, multiple bond issues;

(19) Governing law;

(20) Notices;
 (21) Benefit of agreement;
 (22) Entirety of agreement;
 (23) Amendments and waivers;
 (24) Counterparts;
 (25) Severability; and
 (26) Such other matters as the Secretary believes to be necessary or appropriate.

§ 1720.10 Fees.

(a) *Guarantee fee.* An annual fee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guaranteed bond will be deposited into the Rural Economic Development Subaccount maintained under section 313(b)(2)(A) of the RE Act.

(b) Subject to part (c) of this section, up to one-third of the 30 basis point guarantee fee may be used to fund the subsidy amount of providing guarantees, to the extent not otherwise funded through appropriation actions by Congress.

(c) Notwithstanding subsections (c) and (e)(2) of section 313A of the RE Act, the Secretary shall, with the consent of the lender, structure the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees.

§ 1720.11 Servicing.

The Secretary, or other agent of the Secretary on his or her behalf, shall have the right to service the guaranteed bond, and periodically inspect the books and accounts of the guaranteed lender to ascertain compliance with the provisions of the RE Act and the bond documents.

§ 1720.12 Reporting requirements.

(a) As long as any guaranteed bonds remain outstanding, the guaranteed lender shall provide the Secretary with the following items each year within 90 days of the guaranteed lender's fiscal year end:

(1) Consolidated financial statements and accompanying footnotes, audited by independent certified public accountants;

(2) A review and certification of the security of the government guarantee, audited by reputable, independent certified public accountants or a federal banking regulator, who in the judgment of the Secretary, has the requisite skills, knowledge, reputation, and experience to properly conduct such a review;

(3) Pro forma projection of the guaranteed lender's balance sheet, income statement, and statement of cash flows over the ensuing five years;

(4) Credit assessment issued by a Rating Agency;

(5) A review and certification of the lender's capital adequacy utilizing the

capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and

(5) Other such information requested by the Secretary.

(b) The bond documents shall specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

§ 1720.13 Limitations on guarantees.

In a given year the maximum amount of guaranteed bonds that the Secretary may approve will be subject to budget authority, together with receipts authority from projected fee collections from guaranteed lenders, the principle amount of outstanding concurrent loans made by the guaranteed lender, and Congressionally-mandated ceilings on the total amount of credit. The Secretary may also impose other limitations as appropriate to administer this guarantee program.

§ 1720.14 Nature of guarantee; acceleration of guaranteed bonds.

(a) Any guarantee executed by the Secretary under this part shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the guaranteed bondholder had actual knowledge at the time it purchased the guaranteed bonds.

(b) Amounts due under the guarantee shall be paid within 30 days of demand by a bondholder, certifying the amount of payment then due and payable.

(c) The guarantee shall be assignable and transferable to any purchaser of guaranteed bonds as provided in the bond documents.

(d) The following actions shall constitute events of default under the terms of the guarantee agreements:

(1) The guaranteed lender failed to make a payment of principal or interest when due on the guaranteed bonds;

(2) The guaranteed bonds were issued in violation of the terms and conditions of the bond documents;

(3) The guarantee fee required by 7 CFR 1720.9 of this part has not been paid;

(4) The guaranteed lender made a misrepresentation to the Secretary in any material respect in connection with the application, the guaranteed bonds, or the reporting requirements listed in 7 CFR 1720.11 of this part; or

(5) The guaranteed lender failed to comply with any material covenant or provision contained in the bond documents.

(e) In the event the guaranteed lender fails to cure such defaults within the notice terms and the timeframe set forth in the bond documents, the Secretary

may demand that the guaranteed lender redeem the guaranteed bonds. Such redemption amount will be in an amount equal to the outstanding principal balance, accrued interest to the date of redemption, and prepayment premium, if any. To the extent the Secretary makes any payments under the guarantee, the Secretary shall be deemed the guaranteed bondholder.

(f) To the extent the Secretary makes any payments under the guarantee, the interest rate the government will charge to the guaranteed lender for the period of default shall accrue at an annual rate of the greater of 1.5 times the 91-day Treasury-Bill rate or 200 basis points (2.00%) above the rate on the guaranteed bonds.

(g) Upon guaranteed lender's event of default, under the bond documents, the Secretary shall be entitled to take such other action as is provided for by law or under the bond documents.

§ 1720.15 Equal opportunity requirements.

“Executive Order 12898, “Environmental Justice.” To comply with Executive Order 12898, RUS will conduct a Civil Rights Analysis for each guarantee prior to approval. Rural Development Form 2006–28, “Civil Rights Impact Analysis”, will be used to document compliance in regards to environmental justice.

Dated: December 22, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–31928 Filed 12–29–03; 8:45 am]

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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review'

8 CFR Parts 1001, 1292

[EOIR No. 138P; AG Order 2700–2003]

RIN 1125–AA39

Executive Office for Immigration Review Attorney/Representative Registry

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations pertaining to appearances by attorneys and representatives before the Executive Office for Immigration Review (EOIR). This proposed rule authorizes the Director, EOIR, or his designee to register attorneys and representatives as